

ORDINANCE NO. 28652

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING OF PART 2 OF CHAPTER 13.48 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO REVISE SECTION 13.48.110 TO ELIMINATE THE REQUIREMENT TO FORWARD A HISTORIC LANDMARK NOMINATION TO THE HISTORIC LANDMARKS COMMISSION WHEN THE HISTORIC LANDMARKS COMMISSION IS THE NOMINATING ENTITY, ALLOWING THE DIRECTOR OF PLANNING, BUILDING AND CODE ENFORCEMENT TO INITIATE THE PROCEDURE FOR HISTORIC LANDMARK DESIGNATION, AND MAKING OTHER NONSUBSTANTIVE CLARIFYING CHANGES

WHEREAS, on April 8, 2009, the City Council Rules and Open Government Committee of the City of San José requested the City Administration to develop and bring forward an Ordinance for Council consideration; and

WHEREAS, on September 2, 2009, the Historic Landmarks Commission of the City of San José duly conducted a noticed public hearing on this proposed Ordinance at which interested persons were afforded an opportunity to be heard on the proposed Ordinance and at the conclusion of that public hearing the Commission recommended that the City Council approve this proposed Ordinance; and

WHEREAS, on September 29, 2009, this City Council duly conducted a noticed public hearing on the proposed Ordinance at which all interested persons were afforded an opportunity to be heard on the proposed Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 13.48.110 of Part 2 of Chapter 13.48 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

13.48.110 Procedure for designation of a landmark

A. Any potentially historic property can be nominated for designation as a City landmark by the City Council, the Historic Landmarks Commission or by application of the owner or the authorized agent of the owner of the property for which designation is requested. When a landmark has been nominated by application of the owner or authorized agent of the owner, the application may be withdrawn at any time by the applicant by the filing of a notice of such withdrawal with the City Clerk, provided that said applicant may reapply for landmark designation at any time thereafter, and provided that the Council may nominate the property for such designation at any time after withdrawal. Any nomination for designation by the Historic Landmarks Commission and City Council shall occur after a duly noticed public hearing on the proposed nomination.

B. Any such nomination applications shall be filed with the Director of Planning upon the prescribed form and shall include the following data:

1. Assessor's parcel number of the site;
2. Description of the characteristics and category of the landmarks which meets the requirements this chapter detailing the landmark's special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature;
3. Sketches, drawings, photographs or other descriptive material;
4. Statement of condition of the proposed landmark;
5. Statement of the special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature of the proposed landmark; and
6. Other information requested by said Director.

C. When the nomination documentation is complete, the Director of Planning, Building and Code Enforcement, shall initiate the procedure for the designation of a landmark so nominated by setting the public hearing on the proposed designation required by this Section 13.48.110 before the Historic Landmarks Commission for its recommendation on nominations made by the City Council or a property owner or before the City Council for nominations made by the Historic Landmarks Commission.

D. Whenever proceedings for designation of a landmark have been initiated or withdrawn, the City Clerk shall transmit a copy of the record of initiation or withdrawal to the Director of Planning and Director of Public Works, for their information, and to the Building Official to be maintained in the roster of proposed and designated landmarks and historic districts.

E. Every proposed designation of a landmark nominated by the City Council or property owner shall be considered by the Historic Landmarks Commission at a public hearing. The hearing of the Commission shall be held within ninety (90) days from the date that the Director of Planning, Building and Code Enforcement initiates a proposed landmark nomination for designation by setting a public hearing before the Historic Landmarks Commission. The Historic Landmarks Commission shall report to City Council within thirty (30) days after the close of the public hearing on the landmark nomination, in any event, no later than one hundred twenty days (120) from initiation.

F. Notice of the time and place of such Commission hearings and the purpose thereof shall be given by publication of a notice to appear once in a newspaper of general circulation in the City of San José of at least ten (10) days prior to the date of said hearing; and by mailing the same, postage prepaid, (1) the owner of said property, as shown on the last equalized assessment roll adopted by the County of Santa Clara, or to the address shown for such purposes on the application if the proceedings were initiated by application of the owner, and (2) the occupant of the property if other than the owner. In addition,

the Director of Planning, Building and Code Enforcement shall cause notices of the time, place, and purpose of such hearings to be posted along the frontage of the site of the proposed landmark. Said notices shall contain:

1. A statement of the general location of the landmark;
2. A notice of the time and place and purpose of the hearing;
3. A reference to the application or other documents on file with the Director of Planning for particulars;
4. A statement that any interested person may appear in person or by agent and be heard; and
5. An identification and description of the landmark.

G. After such public hearing, the Historic Landmarks Commission shall recommend to the City Council approval, disapproval or modified approval of every such proposed landmark designation. Such recommendation shall be advisory only and shall not be binding on the Council. Failure of the Historic Landmarks Commission to report to the Council within one hundred twenty (120) days of the date of initiation of the proposed landmark designation by the Director of Planning shall be deemed a recommendation of denial of the proposed designation.

H. Prior to nominating a potentially historic property for designation as a City landmark and/or recommending approval or modified approval of a proposed designation as a City landmark, the Historic Landmarks Commission shall find that said proposed landmark has special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature, and that its designation as a landmark conforms with the goals and policies of the general plan. In making such findings, the Commission may consider the following factors, among other relevant factors, with respect to the proposed landmark:

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;
2. Its location as a site of a significant historic event;
3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;
4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;
5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
6. Its embodiment of distinguishing characteristics of an architectural type or specimen;
7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José; and
8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

I. After receiving a nomination and/or recommendation from the Historic Landmarks Commission, the City Council shall hold a public hearing at the earliest next regular meeting, consistent with the agenda preparation procedure. The City Clerk shall give notice of the time and place of the hearing in the manner prescribed by Subsection F of this section for noticing such hearings before the Historic Landmarks Commission.

J. The City Council by written resolution may approve, disapprove, or give modified approval to a proposed designation.

K. Prior to the approval or modified approval of designation, the City Council shall make those findings specified in subsection H. of this Section.

L. When a landmark has been designated by the Council, as provided above, the City Clerk shall promptly notify the owners of the property included therein by mailing to them a certified copy of the resolution of the Council in the manner prescribed for mailing notices in this Section, or such other address as the owner may request at the time of the hearing. Such resolution shall be recorded by the City Clerk in the Office of the Recorder of the County of Santa Clara. The Clerk shall also send a certified copy of said resolution to the Director of Planning, Building and Code Enforcement, Director of Public Works, the Building Official, and the occupant of the property.

M. Landmarks so designated shall be subject to the provisions of Part 3 of this Chapter.

PASSED FOR PUBLICATION of title this 29th day of September, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk